

PROVIDING FOR CONSIDERATION OF H.R. 3893, GASOLINE
FOR AMERICA'S SECURITY ACT OF 2005

OCTOBER 6, 2005.—Referred to the House Calendar and ordered to be printed

Mr. LINCOLN DIAZ-BALART, from the Committee on Rules,
submitted the following

R E P O R T

[To accompany H. Res. 481]

The Committee on Rules, having had under consideration House Resolution 481, by a nonrecord vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 3893, the Gasoline for America's Security Act of 2005, under a structured rule. The rule provides one hour of general debate equally divided and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce. The rule waives all points of order against consideration of the bill.

The rule provides that the bill shall be considered as read. The rule also provides that the amendment in the nature of a substitute recommended by the Committee on Energy and Commerce now printed in the bill, modified by the amendment printed in part A of this report, shall be considered as adopted.

The rule makes in order the amendment printed in part B of this report, if offered by Representative Stupak of Michigan or his designee, which shall be considered as read, and which shall be debatable for 40 minutes equally divided and controlled by the proponent and an opponent. The rule waives all points of order against the amendment printed in part B of this report. Finally, the rule provides one motion to recommit with or without instructions.

EXPLANATION OF WAIVERS

The waiver of all points of order against consideration of the bill includes a waiver of clause 4(a) of rule XIII (requiring a three-day layover of the committee report) because the Committee on Energy

and Commerce filed its report with the House on Thursday, October 6, 2005 and the bill may be considered by the House as early as Friday, October 7, 2005. The waiver of all points of order also includes a waiver of section 302(f) of the Congressional Budget Act (consideration of legislation providing new budget authority in excess of a subcommittee's 302(b) allocation of such authority). This waiver is necessary because section 111 of the bill as reported by the Energy and Commerce Committee causes that committee to be in breach of its committee allocation. By adoption of the rule the budgetary violation will be cured and the waiver no longer applicable.

COMMITTEE VOTES

Pursuant to clause 3(b) of House rule XIII the results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee Record Vote No. 126

Date: October 6, 2005.

Measure: H.R. 3893, the Gasoline for America's Security Act of 2005.

Motion by: Mrs. Slaughter.

Summary of motion: To make in order and provide the appropriate waivers for the amendment offered by Representative Larson which amends Title 1 of the Petroleum Marketing Practices Act of 1978 (PMPA) to prohibit oil companies from restricting the source of a gasoline dealer's supply of motor fuel.

Results: Defeated 2 to 8.

Vote by Members: Diaz-Balart—Nay; Hastings (WA)—Nay; Sessions—Nay; Putnam—Nay; Capito—Nay; Cole—Nay; Bishop—Nay; Slaughter—Yea; McGovern—Yea; Dreier—Nay.

Rules Committee Record Vote No. 127

Date: October 6, 2005.

Measure: H.R. 3893, the Gasoline for America's Security Act of 2005.

Motion by: Mr. McGovern.

Summary of motion: To make in order and provide the appropriate waivers for the amendment offered by Representative Eshoo which prohibits the President from designating property in the following federal lands as suitable for the siting of a refinery under expedited procedures: the National Wildlife Refuge System, National Conservation Areas, Wilderness Study Areas, the National Forest System, National Wild and Scenic Rivers System, the National Trails System, the National Landscape Conservation System. (The bill already prevents the President from making such designations for land within the National Park System, the National Wilderness Preservation System, and National Monuments. The amendment would not alter those restrictions.)

Results: Defeated 2 to 8.

Vote by Members: Diaz-Balart—Nay; Hastings (WA)—Nay; Sessions—Nay; Putnam—Nay; Capito—Nay; Cole—Nay; Bishop—Nay; Slaughter—Yea; McGovern—Yea; Dreier—Nay.

Rules Committee Record Vote No. 128

Date: October 6, 2005.

Measure: H.R. 3893, the Gasoline for America's Security Act of 2005.

Motion by: Mr. McGovern.

Summary of motion: To make in order and provide the appropriate waivers for the amendment offered by Representative Boehlert which directs the Secretary of Transportation to increase fuel economy standards from today's average of 25 miles/gallon to 33 miles/gallon over 10 years (by 2016), consistent with the findings of the National Academy of Sciences, in order to save 10% of the gasoline the nation would otherwise consume by 2016. Directs the Secretary to maximize job retention in the American auto manufacturing sector and to prevent taking actions that would reduce safety. Authorizes the Secretary to implement a credit trading system between manufacturers, as well as a size-based classification system similar to the Administration's proposal for light trucks.

Results: Defeated 2 to 9.

Vote by Members: Diaz-Balart—Nay; Hastings (WA)—Nay; Sessions—Nay; Putnam—Nay; Capito—Nay; Cole—Nay; Bishop—Nay; Gingrey—Nay; Slaughter—Yea; McGovern—Yea; Dreier—Nay.

PART A—SUMMARY OF AMENDMENT CONSIDERED AS ADOPTED

Barton: Managers' Amendment. The Managers' Amendment to H.R. 3893 amends the bill as reported out of Committee. Amendments to Sections 101 and 105 clarify that the Defense Base Closure and Realignment ("BRAC") process must be followed for any closed military bases designated by the President as potential refinery sites. Section 111 is amended to offer small refiners a rebate instead of a direct discount where payment on the rebate would be subject to appropriations. Deletes Section 106 on New Source Review, Section 207 on Carbon Fuel Cells, and Title VI creating the Hydrogen Economy Commission. Amendments to sections 107, 108, 204, 205, and 501 are technical in nature. The technical amendment to Section 108 ensures provisions in Section 1541(b) of the Energy Policy Act of 2005 remain in effect. Sections 402 and 403 as amended to shorten the rulemaking required of the Federal Trade Commission and other technical changes. Section 403 as amended deleted that credit card study would not include a study of varying cost of credit card transactions to different channels of trade.

PART B—SUMMARY OF AMENDMENT MADE IN ORDER

Stupak: Amendment in the Nature of a Substitute. Gives explicit authority to the FTC to define price gouging. Preserves the FTC's existing civil penalty authority and authorizes new civil penalties of up to three times the amount of unjust profits gained by companies who engage in price gouging. Increases our nation's refinery capacity by establishing a federal Strategic Refinery Reserve which would build upon the success of the Strategic Petroleum Reserve (SPR) by creating a natural extension of the SPR—a refinery reserve. (40 minutes)

PART A: TEXT OF AMENDMENT CONSIDERED AS ADOPTED

In section 101(b)(1), strike the paragraph heading and insert the following: "DESIGNATION REQUIREMENT.—".

In section 101(b)(1), insert “subject to paragraph (3)” after “including closed military installations”.

In section 101(b)(1), strike “Any such designation may be based on” and insert the following:

(2) ANALYSIS OF REFINERY SITES.—In considering any site on Federal lands for possible designation under this subsection, the President shall conduct

In section 101(b)(2)(C), as so redesignated by the previous amendment, strike “such sites are” and insert “such site is”.

In section 101(b)(2)(D), as so redesignated, strike “Nation’s”.

In section 101(b)(2)(F), as so redesignated, strike “national defense” and insert “the impact of locating a refinery on the site on the readiness and operations of the Armed Forces”.

Strike the second paragraph (2) of section 101(b) and insert the following:

(3) SPECIAL RULES FOR CLOSED MILITARY INSTALLATIONS.—

(A) DESIGNATION FOR CONSIDERATION AS REFINERY SITE.—Among the sites designated pursuant to this subsection, the President shall designate no less than 3 closed military installations, or portions thereof, as potentially suitable for the construction of a refinery.

(B) EFFECT OF DESIGNATION.—In the case of a closed military installation, or portion thereof, designated by the President as a potentially suitable refinery site pursuant to this subsection—

(i) the redevelopment authority for the installation, in preparing or revising the redevelopment plan for the installation, shall consider the feasibility and practicability of siting a refinery on the installation; and

(ii) the Secretary of Defense, in managing and disposing of real property at the installation pursuant to the base closure law applicable to the installation, shall give substantial deference to the recommendations of the redevelopment authority, as contained in the redevelopment plan for the installation, regarding the siting of a refinery on the installation.

Strike section 101(c) and insert the following:

(c) USE OF DESIGNATED SITES.—

(1) LEASE.—Except as provided in paragraph (2), the Federal Government shall offer for lease any site designated by the President under subsection (b) consistent with procedures for the disposition of such site under applicable Federal property laws. Notwithstanding any provision of such Federal property laws providing for the disposition or reuse of the site, a lease under this paragraph shall be deemed to be the appropriate disposition of the site. A site shall not be leased under this paragraph except for the purpose of construction of a refinery.

(2) SPECIAL RULES FOR CLOSED MILITARY INSTALLATIONS.—Paragraph (1) shall not apply to a closed military installation. The management and disposal of real property at a closed military installation, even a closed military installation or portion thereof found to be suitable for the siting of a refinery under subsection (b)(3), shall be carried out in the manner provided by the base closure law applicable to the installation.

Strike section 101(d) and insert the following:

(d) APPLICABILITY.—Section 102 shall only apply to a refinery sited or proposed to be sited or expanded or proposed to be expanded—

- (1) in a State whose governor has requested applicability of such section pursuant to subsection (a);
- (2) on a site (other than a closed military installation or portion thereof) designated by the President under subsection (b);
- (3) on a closed military installation, or portion thereof, made available for the siting of a refinery in the manner provided by the base closure law applicable to the installation; or
- (4) on a site leased by the Secretary of a military department under section 2667 of title 10, United States Code, or by the Secretary of Defense under section 2667a of such title for the siting of a refinery.

In section 101(e), redesignate paragraphs (2) and (3) as paragraphs (3) and (4), respectively.

In section 101(e), strike paragraph (1) and insert the following:

- (1) the term “base closure law” means the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) and title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note);
- (2) the term “closed military installation” means a military installation closed or approved for closure pursuant to a base closure law;

In section 101(e)(3), as so redesignated—

- (1) strike “and” at the end of subparagraph (B);
- (2) strike “and” and insert “or” at the end of subparagraph (C); and
- (3) add at the end the following new subparagraph:
(D) under the jurisdiction of the Department of Defense or withdrawn from the public domain for use by the Armed Forces (other than a closed military installation); and

Amend section 105(a) to read as follows:

(a) AUTHORIZATION.—If the President determines that there is not sufficient refining capacity in the United States, the President may authorize the design and construction of a refinery that will be—

- (1) located at a site—
 - (A) designated by the President under section 101(b), other than a closed military installation or portion thereof; or
 - (B) on a closed military installation, or portion thereof, made available for the siting of a refinery in the manner provided by the base closure law applicable to the installation;
- (2) disposed of in the manner provided in paragraph (1) of section 101(c) or, in the case of a closed military installation, or portion thereof, paragraph (2) of such section; and
- (3) reserved for the exclusive purpose of manufacturing petroleum products for consumption by the Armed Forces.

In section 105(b), insert “(or any combination thereof)” after “operation of a refinery”.

In section 105(d), strike “at a price not to exceed their fair market value” and insert “, at a price not to exceed the fair market value of the petroleum products,”.

In section 105, add at the end the following new subsections:

(e) **FUNDING.**—A contract for the design or construction of a refinery may not be entered into under this section in advance of the appropriation of funds sufficient for such purpose. Funds appropriated for the Department of Defense or for Department of Energy national security programs may not be used to enter into contracts under this section for the design, construction, or operation of a refinery. Funds appropriated for the Department of Defense may be used to purchase petroleum products manufactured at a refinery constructed under this section for use by the Armed Forces.

(f) **DEFINITIONS.**—For purposes of this section, the terms “base closure law” and “closed military installation” have the meanings given those terms in section 101.

Strike section 106, redesignate sections 107 through 113 as section 106 through 112 respectively, and make the necessary conforming changes in the table of contents.

In subclause (I) of clause (v) of the quoted matter in section 107(3), strike “the President, in consultation with” and all that follows through the end of the subclause and insert “the President, in consultation with the Administrator and the Secretary of Energy may temporarily waive any control or prohibition respecting the use of a fuel or fuel additive required by this subsection or by subsection (h), (i), (k), or (m); and may, with respect to a State implementation plan, temporarily waive any equivalent control or prohibition respecting the use of a fuel or fuel additive required by this subparagraph. Nothing in this clause shall be construed to authorize the waiver of, or to affect in any way, any Federal or State law or regulation pertaining to ethanol or methyl tertiary butyl ether.”.

In section 108, strike so much of subsection (a) as precedes the quoted material and insert the following:

(a) **LIST OF FUELS.**—Section 211(c)(4)(C) of the Clean Air Act (42 U.S.C. 7545(c)(4)(C)) is amended as follows:

(1) By redesignating subclause (VI) of clause (viii) (as so redesignated by section 107(1) of this Act) as clause (x).

(2) In such redesignated clause (x) by striking “this clause” and inserting “clause (viii) or clause (ix)”.

(3) By inserting the following new subclause at the end of clause (viii) (as so redesignated by section 107(1) of this Act): “(VI) The provisions of this clause, including the limitations of the authority of the Administrator and the limit on the total number of fuels permitted, shall remain in effect until the publication of the list under subclause (III) of clause (ix).”.

(4) By inserting the following new clause after clause (viii) (as so redesignated):

In section 108, in the quoted material, strike “(I) The Administrator” and insert “(ix)(I) The Administrator”.

In section 108—

(1) in the section heading, strike “**FUEL BLENDS**” and insert “**FUELS**”;

(2) in subclause (I) in the quoted matter in subsection (a)(3)—

- (A) strike “6 gasoline and diesel fuel blends” and insert “6 gasoline and diesel fuels”;
- (B) strike “one alternative diesel fuel blend approved under this subparagraph before enactment of this subclause” and insert “one other diesel fuel”;
- (C) strike “2 additional gasoline blends” and insert “2 additional gasolines”; and
- (D) strike “None of the fuel blends” and insert “None of the fuels”;
- (3) in subclause (II) in the quoted matter in subsection (a)(3), strike “diesel fuel blends” and insert “diesel fuels”;
- (4) in subclause (IV) in the quoted matter in subsection (a)(3)—
 - (A) strike “currently approved fuel blends” and insert “currently approved fuels”; and
 - (B) strike “the blends included” and insert “the fuels included”; and
- (5) in the quoted matter in subsection (b)—
 - (A) strike “the number of fuel blends” and insert “the number of fuels”;
 - (B) strike “one alternative diesel fuel blend” and insert “one other diesel fuel”; and
 - (C) strike “additional gasoline blends” and insert “additional gasolines”.

Strike section 110 (relating to northwest crude oil supply) and make the necessary conforming changes in the table of contents.

Amend section 111 to read as follows (and amend the table of contents accordingly):

SECTION 111. REBATES FOR SALES OF ROYALTY-IN-KIND OIL TO QUALIFIED SMALL REFINERIES.

(a) **REQUIREMENT.**—The Secretary of the Interior shall issue and begin implementing regulations by not later than 60 days after the date of the enactment of this Act, under which the Secretary of the Interior shall pay to a qualified small refinery a rebate for any sale to the qualified small refinery of crude oil obtained by the United States as royalty-in-kind.

(b) **AMOUNT OF REBATE.**—The amount of any rebate paid pursuant to this section with respect to any sale of crude oil to a qualified small refinery—

- (1) shall reflect the actual costs of transporting such oil from the point of origin to the qualified small refinery; and
- (2) shall not exceed \$4.50 per barrel of oil sold.

(c) **SUBJECT TO APPROPRIATIONS.**—The requirement to pay rebates under this section is subject to the availability of funds provided in advance in appropriations Acts.

(d) **TERMINATION.**—This section and any regulations issued under this section shall not apply on and after any date on which the Secretary of Energy determines that United States domestic refining capacity is sufficient.

(e) **QUALIFIED SMALL REFINERY DEFINED.**—In this section the term “qualified small refinery” means a refinery of a small business refiner (as that term is defined in section 45H(c)(1) of the Internal Revenue Code of 1986) that demonstrates to the Secretary of the Interior that it had unused crude oil processing capacity in 2004.

In section 204, in the proposed paragraph (4), insert “the” after “agreement pursuant to”.

In section 205(2), in the proposed subsection (g)(1)(A), strike “move natural gas” and insert “gather or transport natural gas”.

In section 205(2), in the proposed subsection (g)(3)(A), strike “gas service company” and insert “gas service provider”.

Strike section 207 and make the necessary conforming changes in the table of contents.

Amend section 402 to read as follows:

SEC. 402. GASOLINE PRICE GOUGING PROHIBITED.

(a) UNLAWFUL CONDUCT.—During a period of a major disaster, it shall be an unfair or deceptive act or practice in violation of section 5 of the Federal Trade Commission Act for any person to sell crude oil, gasoline, diesel fuel, or home heating oil at a price which constitutes price gouging as defined by rule pursuant to subsection (b).

(b) PRICE GOUGING.—Not later than 6 months after the date of the enactment of this Act, the Federal Trade Commission shall promulgate any rules necessary for the enforcement of this section. Such rules shall define “price gouging” for purposes of this section, and shall be consistent with the requirements for declaring unfair acts or practices in section 5(n) of the Federal Trade Commission Act (15 U.S.C. 45(n)).

(c) ENFORCEMENT BY FTC.—

(1) IN GENERAL.—A violation of subsection (a) shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)). The Federal Trade Commission shall enforce this section in the same manner, by the same means, and with the same jurisdiction as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this section.

(2) EXCLUSIVE ENFORCEMENT.—Notwithstanding any other provision of law, no person or State or political subdivision of a State other than the Federal Trade Commission, or the Attorney General to the extent provided for in section 5 of the Federal Trade Commission Act, shall have any authority to enforce this section, or any rule prescribed pursuant to this section.

(d) PENALTIES.—Any person who violates subsection (a), or the rules promulgated pursuant to this section, shall be subject to a civil penalty of not more than \$11,000 per violation.

(e) DEFINITION OF MAJOR DISASTER.—

(1) DETERMINATION.—As used in this section, and for purposes of any rule promulgated pursuant to this section, the term “major disaster” means a major disaster declared by the President as defined in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)) that the Secretary of Energy determines to have substantially disrupted the production, distribution, or supply of crude oil, gasoline, diesel fuel, or home heating oil.

(2) APPLICABLE AREA AND PERIOD.—The prohibition in subsection (a) shall apply to the United States or to a specific geographic region of the United States as determined by the President and the Secretary of Energy at the time in which a deter-

mination under paragraph (1) is made, and for a period of 30 days after such determination is made. The President may extend the prohibition for such additional 30-day periods as the President determines necessary.

Amend section 403(a)(5) to read as follows:

(5) an analysis of the role and overall cost of credit card interchange rates on gasoline and diesel fuel retail prices.

In section 501(a), strike “Notwithstanding any other provision of law,” and insert “In addition to the authority provided under part B of title I of the Energy Policy and Conservation Act (42 U.S.C. 6231 et seq.),”.

Strike title VI and redesignate title VII as title VI and redesignate sections 701 through 704 as section 601 through 604 respectively.

PART B: TEXT OF AMENDMENT MADE IN ORDER

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Federal Response to Energy Emergencies Act of 2005”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1 Short title; table of contents.

TITLE I—PROTECTING CONSUMERS FROM ENERGY PRICE GOUGING

Sec. 101. Unconscionable pricing of gasoline, oil, natural gas, and petroleum distillates during emergencies.

Sec. 102. Declaration of energy emergency.

Sec. 103. Enforcement by the Federal Trade Commission.

Sec. 104. Enforcement at retail level by State attorneys general.

Sec. 105. Low Income energy assistance.

Sec. 106. Effect on other laws.

Sec. 107. Market transparency for crude oil, gasoline, and petroleum distillates.

Sec. 108. Report on United States energy emergency preparedness.

Sec. 109. Protective action to prevent future disruptions of supply.

Sec. 110. Authorization of Appropriations.

TITLE II—ENSURING EMERGENCY SUPPLY OF REFINED PETROLEUM PRODUCTS

Sec. 201. Refineries.

TITLE I—PROTECTING CONSUMERS FROM ENERGY PRICE GOUGING

SEC. 101. UNCONSCIONABLE PRICING OF GASOLINE, OIL, NATURAL GAS, AND PETROLEUM DISTILLATES DURING EMER- GENCIES.

(a) **UNCONSCIONABLE PRICING.**—

(1) IN GENERAL.—During any energy emergency declared by the President under section 102, it is unlawful for any person to sell crude oil, gasoline, natural gas, or petroleum distillates in, or for use in, the area to which that declaration applies at a price that—

(A) is unconscionably excessive; or

(B) indicates the seller is taking unfair advantage of the circumstances to increase prices unreasonably.

(2) FACTORS CONSIDERED.—In determining whether a violation of paragraph (1) has occurred, there shall be taken into account, among other factors, whether—

(A) the amount charged represents a gross disparity between the price of the crude oil, gasoline, natural gas, or petroleum distillate sold and the price at which it was offered for sale in the usual course of the seller's business immediately prior to the energy emergency; or

(B) the amount charged grossly exceeds the price at which the same or similar crude oil, gasoline, natural gas, or petroleum distillate was readily obtainable by other purchasers in the area to which the declaration applies.

(3) MITIGATING FACTORS.—In determining whether a violation of paragraph (1) has occurred, there also shall be taken into account, among other factors, whether the price at which the crude oil, gasoline, natural gas, or petroleum distillate was sold reasonably reflects additional costs, not within the control of the seller, that were paid or incurred by the seller.

(b) FALSE PRICING INFORMATION.—It is unlawful for any person to report information related to the wholesale price of crude oil, gasoline, natural gas, or petroleum distillates to the Federal Trade Commission if—

(1) that person knew, or reasonably should have known, the information to be false or misleading;

(2) the information was required by law to be reported; and

(3) the person intended the false or misleading data to affect data compiled by that department or agency for statistical or analytical purposes with respect to the market for crude oil, gasoline, natural gas, or petroleum distillates.

(c) MARKET MANIPULATION.—It is unlawful for any person, directly or indirectly, to use or employ, in connection with the purchase or sale of crude oil, gasoline, natural gas, or petroleum distillates at wholesale, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Federal Trade Commission may prescribe as necessary or appropriate in the public interest or for the protection of United States citizens.

(d) RULEMAKING.—Not later than 180 days after the date of the enactment of this title, the Federal Trade Commission shall promulgate rules necessary and appropriate to enforce this section.

SEC. 102. DECLARATION OF ENERGY EMERGENCY.

(a) IN GENERAL.—If the President finds that the health, safety, welfare, or economic well-being of the citizens of the United States is at risk because of a shortage or imminent shortage of adequate supplies of crude oil, gasoline, natural gas, or petroleum distillates due to a disruption of the national distribution system for crude oil, gasoline, natural gas, or petroleum distillates (including such a shortage related to a major disaster (as defined in section 102(2)

of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122))), or significant pricing anomalies in national or regional energy markets for crude oil, gasoline, natural gas, or petroleum distillates of a more than transient nature, the President may declare that a Federal energy emergency exists.

(b) **SCOPE AND DURATION.**—The declaration shall apply to the Nation, a geographical region, or 1 or more States, as determined by the President, but may not be in effect for a period of more than 45 days.

(c) **EXTENSIONS.**—The President may—

(1) extend a declaration under subsection (a) for a period of not more than 45 days; and

(2) extend such a declaration more than once.

SEC. 103. ENFORCEMENT BY THE FEDERAL TRADE COMMISSION.

(a) **ENFORCEMENT BY FTC.**—A violation of section 101 shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)). The Federal Trade Commission shall enforce this title in the same manner, by the same means, and with the same jurisdiction as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this title. In enforcing section 101(a) of this title, the Commission shall give priority to enforcement actions concerning companies with total United States wholesale or retail sales of crude oil, gasoline, and petroleum distillates in excess of \$500,000,000 per year.

(b) **CIVIL PENALTIES.**—

(1) **IN GENERAL.**—Notwithstanding the penalties set forth under the Federal Trade Commission Act, any person who violates section 101 shall be subject to the following penalties:

(A) **PRICE GOUGING; UNJUST PROFITS.**—Any person who violates section 101(a) shall be subject to—

(i) a fine of not more than 3 times the amount of profits gained by such person through such violation; or

(ii) a fine of not more than \$3,000,000.

(B) **FALSE INFORMATION; MARKET MANIPULATION.**—Any person who violates section 101(b) or 101(c) shall be subject to a civil penalty of not more than \$1,000,000.

(2) **METHOD OF ASSESSMENT.**—The penalties provided by paragraph (1) shall be assessed in the same manner as civil penalties imposed under section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

(3) **MULTIPLE OFFENSES; MITIGATING FACTORS.**—In assessing the penalty provided by subsection (a)—

(A) each day of a continuing violation shall be considered a separate violation; and

(B) the Federal Trade Commission shall take into consideration the seriousness of the violation and the efforts of the person committing the violation to remedy the harm caused by the violation in a timely manner.

SEC. 104. ENFORCEMENT AT RETAIL LEVEL BY STATE ATTORNEYS GENERAL.

(a) **IN GENERAL.**—A State, as *parens patriae*, may bring a civil action on behalf of its residents in an appropriate district court of the United States to enforce the provisions of section 101(a) of this title, or to impose the civil penalties authorized by section 103(b)(1)(B), whenever the attorney general of the State has reason to believe that the interests of the residents of the State have been or are being threatened or adversely affected by a violation of this title or a regulation under this title.

(b) **NOTICE.**—The State shall serve written notice to the Federal Trade Commission of any civil action under subsection (a) prior to initiating such civil action. The notice shall include a copy of the complaint to be filed to initiate such civil action, except that if it is not feasible for the State to provide such prior notice, the State shall provide such notice immediately upon instituting such civil action.

(c) **AUTHORITY TO INTERVENE.**—Upon receiving the notice required by subsection (b), the Federal Trade Commission may intervene in such civil action and upon intervening—

- (1) be heard on all matters arising in such civil action; and
- (2) file petitions for appeal of a decision in such civil action.

(d) **CONSTRUCTION.**—For purposes of bringing any civil action under subsection (a), nothing in this section shall prevent the attorney general of a State from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(e) **VENUE; SERVICE OF PROCESS.**—In a civil action brought under subsection (a)—

- (1) the venue shall be a judicial district in which—

- (A) the defendant operates;
- (B) the defendant was authorized to do business; or
- (C) where the defendant in the civil action is found;

- (2) process may be served without regard to the territorial limits of the district or of the State in which the civil action is instituted; and

- (3) a person who participated with the defendant in an alleged violation that is being litigated in the civil action may be joined in the civil action without regard to the residence of the person.

(f) **LIMITATION ON STATE ACTION WHILE FEDERAL ACTION IS PENDING.**—If the Federal Trade Commission has instituted a civil action or an administrative action for violation of this title, no State attorney general, or official or agency of a State, may bring an action under this subsection during the pendency of that action against any defendant named in the complaint of the Federal Trade Commission or the other agency for any violation of this title alleged in the complaint.

(g) **ENFORCEMENT OF STATE LAW.**—Nothing contained in this section shall prohibit an authorized State official from proceeding in State court to enforce a civil or criminal statute of such State.

SEC. 105. LOW INCOME ENERGY ASSISTANCE.

Amounts collected in fines and penalties under sections 103 of this title shall be deposited in a separate fund in the treasury to be known as the Consumer Relief Trust Fund. To the extent provided for in advance in appropriations Acts, such fund shall be used to provide assistance under the Low Income Home Energy Assistance Program established under title XXVI of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 8621 et seq.).

SEC. 106. EFFECT ON OTHER LAWS.

(a) **OTHER AUTHORITY OF FEDERAL TRADE COMMISSION.**—Nothing in this title shall be construed to limit or affect in any way the Federal Trade Commission's authority to bring enforcement actions or take any other measure under the Federal Trade Commission Act (15 U.S.C. 41 et seq.) or any other provision of law.

(b) **STATE LAW.**—Nothing in this title preempts any State law.

SEC. 107. MARKET TRANSPARENCY FOR CRUDE OIL, GASOLINE, AND PETROLEUM DISTILLATES.

(a) **IN GENERAL.**—The Federal Trade Commission shall facilitate price transparency in markets for the sale of crude oil and essential petroleum products at wholesale, having due regard for the public interest, the integrity of those markets, fair competition, and the protection of consumers.

(b) **MARKETPLACE TRANSPARENCY.**—

(1) **DISSEMINATION OF INFORMATION.**—In carrying out this section, the Federal Trade Commission shall provide by rule for the dissemination, on a timely basis, of information about the availability and prices of wholesale crude oil, gasoline, and petroleum distillates to the Federal Trade Commission, States, wholesale buyers and sellers, and the public.

(2) **PROTECTION OF PUBLIC FROM ANTICOMPETITIVE ACTIVITY.**—In determining the information to be made available under this section and time to make the information available, the Federal Trade Commission shall seek to ensure that consumers and competitive markets are protected from the adverse effects of potential collusion or other anticompetitive behaviors that can be facilitated by untimely public disclosure of transaction-specific information.

(3) **PROTECTION OF MARKET MECHANISMS.**—The Federal Trade Commission shall withhold from public disclosure under this section any information the Commission determines would, if disclosed, be detrimental to the operation of an effective market or jeopardize system security.

(c) **INFORMATION SOURCES.**—

(1) **IN GENERAL.**—In carrying out subsection (b), the Federal Trade Commission may—

(A) obtain information from any market participant; and

(B) rely on entities other than the Commission to receive and make public the information, subject to the disclosure rules in subsection (b)(3).

(2) **PUBLISHED DATA.**—In carrying out this section, the Federal Trade Commission shall consider the degree of price transparency provided by existing price publishers and providers of trade processing services, and shall rely on such publishers and services to the maximum extent possible.

(3) **ELECTRONIC INFORMATION SYSTEMS.**—The Federal Trade Commission may establish an electronic information system if it determines that existing price publications are not adequately providing price discovery or market transparency. Nothing in this section, however, shall affect any electronic information filing requirements in effect under this title as of the date of enactment of this section.

(4) **DE MINIMUS EXCEPTION.**—The Federal Trade Commission may not require entities who have a de minimus market presence to comply with the reporting requirements of this section.

(d) **COOPERATION WITH OTHER FEDERAL AGENCIES.**—

(1) **MEMORANDUM OF UNDERSTANDING.**—Within 180 days after the date of enactment of this title, the Federal Trade Commission shall conclude a memorandum of understanding with the Commodity Futures Trading Commission and other appropriate agencies (if applicable) relating to information sharing, which shall include provisions—

(A) ensuring that information requests to markets within the respective jurisdiction of each agency are properly coordinated to minimize duplicative information requests; and

(B) regarding the treatment of proprietary trading information.

(2) **CFTC JURISDICTION.**—Nothing in this section may be construed to limit or affect the exclusive jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.).

(e) **RULEMAKING.**—Within 180 days after the date of enactment of this title, the Federal Trade Commission shall initiate a rulemaking proceeding to establish such rules as the Commission determines to be necessary and appropriate to carry out this section.

SEC. 108. REPORT ON UNITED STATES ENERGY EMERGENCY PREPAREDNESS.

(a) **POTENTIAL IMPACTS REPORT.**—Within 30 days after the date of enactment of this title, the Federal Trade Commission shall transmit to the Congress a confidential report describing the potential impact on domestic prices of crude oil, residual fuel oil, and refined petroleum products that would result from the disruption for periods of 1 week, 1 year, and 5 years, respectively, of not less than—

- (1) 30 percent of United States oil production;
- (2) 20 percent of United States refinery capacity; and
- (3) 5 percent of global oil supplies.

(b) **PROJECTIONS AND POSSIBLE REMEDIES.**—The President shall include in the report—

- (1) projections of the impact any such disruptions would be likely to have on the United States economy; and
- (2) detailed and prioritized recommendations for remedies under each scenario covered by the report.

SEC. 109. PROTECTIVE ACTION TO PREVENT FUTURE DISRUPTIONS OF SUPPLY.

The Secretary of Energy and the Energy Information Administration shall review expenditures by, and activities undertaken by, companies with total United States wholesale or retail sales of crude oil, gasoline, and petroleum distillates in excess of

\$500,000,000 per year to protect the energy supply system from terrorist attacks, international supply disruptions, and natural disasters, and ensure a stable and reasonably priced supply of such products to consumers in the United States, and, not later than 180 days after the date of the enactment of this title, shall transmit a report of their findings to Congress. Such report shall include an assessment of the companies' preparations for the forecasted period of more frequent and more intense hurricane activity in the Gulf of Mexico and other vulnerable coastal areas.

SEC. 110. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

TITLE II—REFINERIES

SEC. 201. REFINERIES.

Title I of the Energy Policy and Conservation Act is amended by adding at the end the following new part:

“PART E—REFINERIES

“SEC. 191. STRATEGIC REFINERY RESERVE.

“(a) ESTABLISHMENT.—The Secretary shall establish and operate a Strategic Refinery Reserve in the United States. The Secretary may design and construct new refineries, or acquire closed refineries and reopen them, to carry out this section.

“(b) OPERATION.—The Secretary shall operate refineries in the Strategic Refinery Reserve for the following purposes:

“(1) During any period described in subsection (c), to provide petroleum products to the general public.

“(2) To provide petroleum products to the Federal Government, including the Department of Defense, as well as State governments and political subdivisions thereof who choose to purchase refined petroleum products from the Strategic Refinery Reserve.

“(c) EMERGENCY PERIODS.—The Secretary shall make petroleum products from the Strategic Refinery Reserve available under subsection (b)(1) only—

“(1) during a severe energy supply interruption, within the meaning of such term under part B; or

“(2) if the President determines that there is a regional petroleum product supply shortage of significant scope and duration and that action taken under subsection (b)(1) would assist directly and significantly in reducing the adverse impact of such shortage.

“(d) LOCATIONS.—In determining the location of a refinery for the Strategic Refinery Reserve, the Secretary shall take into account the following factors:

“(1) Impact on the local community (determined after requesting and receiving comments from State, county or parish, and municipal governments, and the public).

“(2) Regional vulnerability to a natural disaster.

“(3) Regional vulnerability to terrorist attacks.

“(4) Proximity to the Strategic Petroleum Reserve.

“(5) Accessibility to energy infrastructure.

“(6) The need to minimize adverse public health and environmental impacts.

“(7) The energy needs of the Federal Government, including the Department of Defense.

“(e) INCREASED CAPACITY.—The Secretary shall ensure that refineries in the Strategic Refinery Reserve are designed to enable a rapid increase in production capacity during periods described in subsection (c).

“(f) IMPLEMENTATION PLAN.—Not later than 6 months after the date of enactment of this section, the Secretary shall transmit to the Congress a plan for the establishment and operation of the Strategic Refinery Reserve under this section. Such plan shall provide for establishing, within 2 years after the date of enactment of this section, and maintaining a capacity for the Reserve equal to 5 percent of the total United States daily demand for gasoline, home heating oil, and other refined petroleum products. If the Secretary finds that achieving such capacity within 2 years is not feasible, the Secretary shall explain in the plan the reasons therefor, and shall include provisions for achieving such capacity as soon as practicable. Such plan shall also provide for adequate delivery systems capable of providing Strategic Refinery Reserve product to the entities described in subsection (b)(2).

“(g) COMPLIANCE WITH FEDERAL ENVIRONMENTAL REQUIREMENTS.—Nothing in this section shall affect any requirement to comply with Federal or State environmental or other law.

“SEC. 192. REFINERY CLOSING REPORTS.

“(a) CLOSING REPORTS.—The owner or operator of a refinery in the United States shall notify the Secretary at least 6 months in advance of permanently closing the refinery, and shall include in such notice an explanation of the reasons for the proposed closing.

“(b) REPORTS TO CONGRESS.—The Secretary, in consultation with the Federal Trade Commission, shall promptly report to the Congress any report received under subsection (a), along with an analysis of the effects the proposed closing would have on petroleum product prices, competition in the refining industry, the national economy, regional economies and regional supplies of refined petroleum products, and United States energy security.”.